

**THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO**

IN RE:)	CHAPTER 13
)	CASE NO: 07-53017
Christine Roberta Harvey)	
)	MARILYN SHEA-STONUM
)	BANKRUPTCY JUDGE
DEBTOR(S))	
)	<u>TRUSTEE'S MOTION TO TURN FUNDS</u>
)	<u>DUE BARCLAY CAPITAL REAL ESTATE</u>
)	<u>OR SUCCESSORS OR ASSIGNS OVER TO</u>
)	<u>UNCLAIMED FUNDS OF THE US</u>
)	<u>BANKRUPTCY COURT</u>

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Now comes Keith L. Rucinski, the Chapter 13 Trustee, and hereby moves this Court for an order to turn funds due Barclays Capital Real Estate Inc. over to the unclaimed funds account of the US Bankruptcy Court pursuant to Federal Rules of Bankruptcy Procedure 3011. The Trustee states the following:

1. On or about January 23, 2008, Barclays Capital Real Estate filed amended claim number 09-2.
2. Said claim 09-2 represents a mortgage on the debtor's property.
3. The Trustee paid Barclays funds for approximately two years.
4. Beginning in late 2010, checks began being returned by Barclays indicating that the funds were either sold to Ocwen or Wells Fargo.
5. However, both Ocwen or Wells Fargo have declined to accept payment on the remaining balance of the claim through the Chapter 13 plan indicating that this account did not belong to either entity.
6. The Trustee is attempting to turnover approximately \$9,800 to the unclaimed funds account of the US Bankruptcy Court so the debtor may earn a discharge in this case.
7. More importantly, the Trustee is attempting to turnover these funds so that in case the creditor attempts to collect from the debtor post-discharge, the debtor will be able to point to an order and direct the creditor to the unclaimed funds for payment.
8. The Trustee notes that it will be necessary for debtor's counsel to review this case and file any motions to avoid liens that counsel deems are appropriate.
9. The next several paragraphs list the attempts the Chapter 13 office has made to contact the holder of the claim:

- a) Claim 09-1, filed on 10/22/07, is for Barclays Capital Real Estate. Andrew Goldberg, attorney for claimant filed the claim on their behalf.

The address on the proof of claim is:
Barclays Capital Real Estate Inc dba HomEq Servicing
Attn: Default Servicing, 701 Corporate Center Drive
Raleigh, NC 27607

*No disbursements were made on claim 09-1.

CHAPTER 13
Keith L Rucinski
Trustee
One Cascade Plaza
Suite 2020
Akron, Oh 44308
(330) 762-6335
Fax
(330) 762-7072
Email
krucinski@chl3akron.com

- b) Claim 09-2, filed on 1/23/08, is for Barclays Capital Real Estate Inc dba HomEq Servicing. Andrew Goldberg, attorney for claimant filed the claim on their behalf.

The **payment** address on the proof of claim is:
Barclays Capital Real Estate Inc dba HomEq Servicing
Attn: Default Servicing, 701 Corporate Center Drive
Raleigh, NC 27067

The **notice** address on the proof of claim is:
Rosicki, Rosicki & Associates P.C.
51 East Bethpage Road
Plainview, NY 11803

- c) 3/31/08-6/30/10-Payments were sent to HomEq to the payment address listed on the proof of claim and cleared. No issue until the August 2010 payment was returned.
- d) 10/4/10- August 2010 payment sent to HomEq was sent back to Chapter 13 office from Ocwen with a letter stating Ocwen Loan Servicing is not the servicer of the loan. The returned check was NOT sent to Ocwen, it was sent to HomEq at the address on the proof of claim. The claim was kept as is because no transfer of claim was filed and all other checks until that point had cleared.
- e) 11/22/10- September 2010 payment sent to HomEq was sent back to Chapter 13 office from Ocwen with a letter stating Ocwen Loan Servicing is not the servicer of the loan. The returned check was NOT sent to Ocwen, it was sent to HomEq at the address on the proof of claim. The claim was kept as is.
- f) 12/28/10- October 2010 payment sent to HomEq was sent back to Chapter 13 office from Ocwen with a letter stating Ocwen Loan Servicing is not the servicer of the loan. The returned check was NOT sent to Ocwen, it was sent to HomEq at the address on the proof of claim. The Chapter 13 office called Rosicki, Rosicki & Assoc, 516-741-2585. Left voicemail for the person who handles those cases.
- g) 12/29/10 Jennifer Neunz, of the Chapter 13 office, was copied on an email from Dina Leavy who works for Rosicki, Rosicki & Associates who emailed several people regarding the phone call to her. April Kennedy from Quantum Servicing emailed her back that this case is not on their books. Per Dina, the HomEq loans were mainly transferred to Ocwen or Wells Fargo but some were acquired by Quantum and Statebridge Company.
- h) 12/30/10- December payment sent to HomEq in the amount of \$1,677.55 cleared.
- i) 5/16/11- February and March 2011 payments were sent to HomEq and returned by Ocwen with a letter saying they no longer service the loan. The check had a sticker on it which said to remit payments to Wells Fargo Bank, PO Box 45038, Jacksonville, FL 32232. Payments cleared until the January

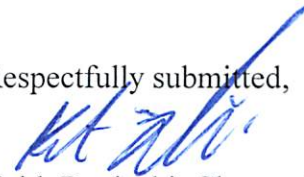
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2012 check was sent.

- j) 2/13/12- January 2012 check sent to Wells Fargo was returned to Chapter 13 office from the post office. Per our new policy the Chapter 13 office sent a letter to Barclays, Wells Fargo and Rosicki, Rosicki & Associates telling them they must file an amended claim or transfer of claim with the correct creditor or address listed and that we will accrue funds until that happens.
 - k) 7/5/12- A second letter was sent because no action was taken after the first. Claim remained on accrue.
 - l) 6/2013- Because two letters were sent to the creditors and no action was taken the disbursement address was changed back to match what was listed on claim 09-2 because a transfer of claim was never filed and addresses changed were based on letters and info on checks, which obviously wasn't accurate because the payments were still coming back to the Chapter 13 office. The claim was then taken off accrue so a check could be written and pulled as we were holding funds. The check was pulled pending a resolution to the ongoing issue.
- 10. For reference purpose, the Trustee is also enclosing a copy of the proof of claim 09-2.
 - 11. The Trustee is serving all addresses the Trustee has for Barclays, Ocwen or Wells Fargo with this motion in the hopes that one of these parties will actually come forward saying that they are administering the claim.
 - 12. In the absence of any party in interest filing a response to this motion stating that they own this claim, the Trustee respectfully asks that the funds due on the balance of this claim to be turned over to the unclaimed funds of the US Bankruptcy Court pursuant to Federal Rules of Bankruptcy Procedure 3011.

Respectfully submitted,



Keith Rucinski, Chapter 13 Trustee
Ohio Reg. No. 0063137
Joseph A. Ferrise, Staff Attorney
Ohio Reg. No. 0084477
One Cascade Plaza, Suite 2020
Akron, OH 44308
Tel 330.762.6335
Fax 330.762.7072

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CERTIFICATE OF SERVICE

I hereby certify that on Sept 6, 2013, a copy of the foregoing was sent via Regular Mail to:

Christine Roberta Harvey
1064 Winton Avenue
Akron, OH 44320

Rosicki, Rosicki & Associates PC
51 East Bethpage Road
Plainview, NY 11803

Barclays Capital Real Estate Inc fba Homeq Servicing
Attn: Default Servicing
701 Corporate Center Drive
Raleigh, NC 27607

Barclays Capital Real Estate
PO Box 160101
Sacramento, CA 95816

Wells Fargo Bank Payment Processing
PO Box 45038
Jacksonville, OH 32232

Ocwen Loan Servicing LLC
PO Box 24726
West Palm Beach, FL 33416-4726

via ECF:

Mark C. Cavanaugh, Esquire at atty@mccavanaughlaw.com

Amy Good, Esquire-Office of the US Trustee at Amy.L.Good@usdoj.gov

Andy Vara, Asst US Trustee-Office of the US Trustee at Andy.Vara@usdoj.gov

CHAPTER 13

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Fax
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Email
krucinski@ch13akron.com

/s/ Monica Jones
Office of the Chapter 13 Trustee

UNITED STATES BANKRUPTCY COURT <u>NORTHERN</u> DISTRICT OF <u>OHIO</u>		AMENDED PROOF OF CLAIM
Name of Debtor: Christine Roberta Harvey aka Christine R. Harvey		Case Number: 07-53017
NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.		
Name of Creditor (The person or other entity to whom the debtor Owes money or property): Barclays Capital Real Estate Inc	<input checked="" type="checkbox"/> Check this box to indicate that this claim amends a previously filed claim.	
Name and address where notices should be sent: Rosicki, Rosicki & Associates P.C. 51 East Bethpage Road, Plainview, NY 11803 Telephone Number: 516-741-2585	Court Claim Number: <u>2</u> (if known) Filed on: <u>10/22/2007</u>	
Name and address where payment should be sent (if different from above): Barclays Capital Real Estate Inc, dba Homeq Servicing Attn. Default Servicing, 701 Corporate Center Drive Raleigh, North Carolina 27607 Telephone number: 516-741-2585	<input type="checkbox"/> Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars. <input type="checkbox"/> Check this box if you are the debtor	
1. Amount of Claim as of Date Case Filed: <u>\$32,986.68</u> If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4. If all or part of your claim is entitled to priority, complete item 5. <input checked="" type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principle amount of claim. Attach itemized statement of interest or charges.	5. Amount of Claim Entitled to Priority under 11 U.S.C. § 507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount. Specify the priority of the claim: <input type="checkbox"/> Domestic support obligations under 11 U.S.C § 507(a)(1)(A) or (a)(1)(B). <input type="checkbox"/> Wages, salaries, or commissions (up to \$10,950*), earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C § 507(a)(4) <input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C § 507(a)(5). <input type="checkbox"/> Up to \$2,425* of deposits toward purchase, lease, or rental of property Or services for personal, family, or household use - 11 U.S.C § 507(a)(7). <input type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C § 507(a)(8). <input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C § 507(a)(____). Amount entitled to priority: \$ _____	
2. Basis for Claim: <u>Mortgage Note</u>		
3. Last four digits of any number by which creditor identifies debtor: <u>6786</u> 3a. Debtor may have scheduled account as: _____ (see instruction #3a on reverse side.)		
4. Secured Claim (see instruction #4 on reverse side.) Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information. Nature of property or right of setoff: <input checked="" type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other Describe: Value of Property: \$ _____ Annual Interest Rate _____ % Amount of arrearage and other charges as of time case filed included in secured claim, if any: \$ <u>24,223.29</u> Basis for perfection: _____ Amount of Secured Claim: <u>\$32,986.68</u> Amount Unsecured: \$ _____		
6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim		
7. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements or running accounts, contracts, judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (See definition of "redacted" on reverse side.) DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING. If the documents are not available, please explain:		
Date: <u>01/23/2008</u>	Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor of other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any. <u>/s/ Andrew Goldberg</u> Attorney In Fact for Barclays Capital Real Estate, Inc., D/B/A Homeq Servicing as servicing agent for Wachovia Bank, NA	FOR COURT USE ONLY

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571

LOAN# 6786

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF OHIO
AKRON DIVISION

-----X
In re:
Christine Roberta Harvey aka Christine R. Harvey
Debtor(s)
-----X

Chapter 13
Case No. 07-53017

EXHIBIT A

ITEMIZATION OF CLAIM

Total Claim as of September 19, 2007

-Principal Balance	\$13,611.47
-Interest	\$5,351.27
-Pre-Petition Attorney Fees and Costs	\$4,463.21
-Pre-Petition Escrow Advances	\$8,368.73
-Other amounts for Appraisal Fees, and Other Charges, etc.	\$1,192.00
TOTAL CLAIM	\$ 32,986.68

Total Arrearage as of September 19, 2007

-Regular Monthly Installments through September 1, 2007 Payments From 11/01/2004 To 09/01/2007 291.41	\$10,199.35
-Pre-Petition Attorney Fees and Costs	\$4,463.21
-Pre-Petition Escrow Advances	\$8,368.73
-Other amounts for Appraisal Fees, and Other Charges, etc.	\$1,192.00
TOTAL ARREARAGE	\$24,223.29
Next post Petition Payment Amount	\$ 291.41

Claimant may be entitled, and reserves the right, to charge Debtor(s)' account pursuant to the loan documents for all amounts which are collectible after the bankruptcy petition date, including, but not limited to: regular monthly installments; applicable interest and/or escrow charges; applicable late charges; and reasonable attorney's fees and costs incurred by Claimant in connection with the instant bankruptcy case such as preparation and filing of notice of appearance, review of plan, preparation and filing of proof of claim, preparation and filing of objection to confirmation, motions for relief from the automatic stay, and attendance at hearings relating to the foregoing.

Please forward all payments to:

U.S. Mail:

HomEq Servicing Default Cash / Suite 200 4837 Watt Ave. North Highlands, CA 95660

Overnight payments:

Barclays Capital Real Estate Inc. dba HomEq Cash Control - CA 3358 - 4837 Watt Avenue, Suite 200
North Highlands, CA 95660

Please forward all correspondence and court pleadings to:

Rosicki, Rosicki & Associates, P.C., 51 E. Bethpage Road, Plainview, N.Y. 11803

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

-----x

In re:

Christine Roberta Harvey aka Christine R. Harvey
Debtor(s)

-----x

STATE OF NEW YORK)
COUNTY OF NASSAU) ss:

Chapter 13
Case No. 07-53017

AFFIDAVIT OF SERVICE

Felicia Stellman , being duly sworn, deposes and says:

I am not a party to this action, am over 18 years of age and reside in Nassau County, New York.

On January 23, 2008 , I served the Amended Proof of Claim, by depositing a true copy thereof in a post-paid wrapper, in an official depository under the exclusive care and custody of the U.S. Postal Service within New York State, addressed to each of the following persons at the last known address set forth after each name:

Mark C. Cavanaugh, Esq.
Attorney for Debtor(s)
755 White Pond Drive, Suite 403
Akron, OH 44320

Jerome L. Holub, Esq.
Trustee
One Cascade Plaza Suite 2020
Akron, OH 44308

/s/ Felicia Stellman
Felicia Stellman

Sworn to before me this
January 23, 2008
/s/ Betsy P. Tarr
NOTARY PUBLIC

BETSY P. TARR
NOTARY PUBLIC, State of New York
No. 01TA6000083
Qualified in Nassau County
Commission Expires December 8, 2009

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

-----x

In re:

Christine Roberta Harvey aka Christine R. Harvey

Debtor(s)

-----x

Chapter 13

Case No. 07-53017

AMENDED PROOF OF CLAIM

AMENDED PROOF OF CLAIM

ROSICKI, ROSICKI & ASSOCIATES, P.C.
Outsource Management Department
Main Office: 51 E. Bethpage Road
Plainview, New York 11803
Telephone (516) 741-2585